

2010-36072 / Court: 129

Filed 10 June 11 P12:38
Loren Jackson - District Clerk
Harris County
ED101J015822035
By: Nelson Cuero

Cause No. _____

In re: Order for Foreclosure
Concerning

Barbara C. Myers and Leeroy M. Myers
("Respondent[s]")

and

12215 Carola Forest Drive, Houston, TX 77044
("Property Mailing Address")

and

Litton Loan Servicing, LP
("Applicant")

IN THE DISTRICT COURT OF

HARRIS COUNTY TEXAS

JUDICIAL DISTRICT

VERIFIED TEX. RULE CIV. P. 736
APPLICATION FOR HOME EQUITY FORECLOSURE ORDER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Litton Loan Servicing, LP (hereinafter "Applicant"), and files this Verified Application seeking an order allowing an *in rem* foreclosure in accordance with Tex. Rule Civ. P. 736. In support of this application, Applicant would show as follows:

1. Tex. R. Civ. P. 736(1)(B): Leeroy M. Myers (hereinafter referred to as "Respondent(s)") is/are obligated to pay the debt secured by the property and loan agreement and is/are the grantor(s) of the security instrument evidencing the debt that encumbers the property sought to be foreclosed which is made the subject of this proceeding. See Home Equity Note, attached hereto as and made a part herein by reference. Barbara C. Myers (hereinafter referred to as "Respondent(s)") is a grantor of the security instrument evidencing the debt that encumbers the property sought to be foreclosed. Each Respondent will be served with notice of this proceeding in accordance with Tex. R. Civ. P. 736(2), which provides for service by certified and regular mail. No personal liability is sought against any Respondent.

2. Tex. R. Civ. P. 736(1)(C): The real property, fixtures, and improvements made the subject of this proceeding is commonly known as 12215 Carola Forest Drive, Houston, TX 77044 and is legally described as follows:

LOT NINETEEN (19), IN BLOCK EIGHT (8), OF REPLAT OF KINGS LAKE FOREST, SECTION ONE (1), AN ADDITION IN HARRIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 279, PAGE 64 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS

3. Tex. R. Civ. P. 736(1)(D): Applicant is the current mortgagee, as the term "mortgagee" is defined in Tex. Prop. Code §51.0001(4), of Respondent's loan agreement. See documents evidencing Applicant's status as current mortgagee, attached hereto as and made a part herein by reference. As provided in Tex. Bus. & Com. Code § 3.301, Applicant is the person entitled to enforce Respondent's loan agreement. Applicant's mortgage servicer or its successors and assigns, as the term "mortgage servicer" is defined in Tex. Prop. Code § 51.0001(3), is Litton Loan Servicing, L.P. which is Applicant's duly authorized agent for all loan servicing administration matters related to the debt owed to Applicant by Respondent(s). All conditions precedent for Applicant's mortgage servicer to administer this foreclosure proceeding have been accomplished in accordance with Tex. Prop. Code § 51.0025.

4. Applicant is the current mortgagee of Respondent's loan agreement dated March 27, 2006, in the original principal amount of \$50,000.00, executed by Leeroy M. Myers. The note was further secured by a Security Instrument dated March 27, 2006 which is recorded under Clerk's File No. 2198524 in the Real Property Records of Harris County, Texas. See Home Equity Security Instrument, attached hereto as and made a part herein by reference. The security agreement was executed by Barbara C. Myers and Leeroy M. Myers. See *id.*

5. Applicant alleges herein and further supplements its allegations in the Affidavit attached hereto, that:

a. Tex. R. Civ. P. 736(1)(E)(1): A debt exists by virtue of the loan agreement executed by Respondent that evidences Respondent's promise to repay the sums

borrowed. The payoff good through May 28, 2010 is \$54,743.63. However, this sum increases daily under the terms of the loan agreement to include, but not limited to, late charges, earned interest, collection costs to include attorney fees, taxes, insurance, and other legally authorized expenses.

b. Tex. R. Civ. P. 736(1)(E)(2): The debt is secured by a lien created under Tex. Const. Art. XVI §50a(6), for a home equity loan as evidenced by the Security Instrument attached hereto that is recorded in the official real property records of this county.

c. Tex. R. Civ. P. 736(1)(E)(3): A default under the security instrument exists because Respondent has breached his/her obligations under the loan agreement as further described below and in the Verified Affidavit attached hereto.

d. Tex. R. Civ. P. 736(1)(F): A default exists under the Deed of Trust or security instrument in that the Respondent(s) failed or refused to timely pay their mortgage obligations in accordance with the terms and condition of the loan agreement. The Respondent(s) failed to pay the required monthly payment which became due on May 1, 2009 and every monthly installment that has become due since that date.

e. Tex. R. Civ. P. 736(1)(E)(4): Per the attached Affidavit, the Applicant, by and through its duly authorized mortgage servicer or attorney, has given Respondent(s) the requisite foreclosure notices under the Security Instrument : (i) a notice of default and intent to accelerate the maturity of the debt, and (ii) a notice of acceleration of the maturity of the debt complying with federal fair debt guidelines, Tex. Prop. Code. §51.002 and applicable law. See Notices of Default and Notices of Acceleration, attached hereto as and made a part herein by reference. Said notices were provided and mailed to the Respondent(s) at the last known mailing address for each Respondent. See *id.*

6. Tex. R. Civ. P. 736(1)(G): Applicant seeks a court order required by Texas Constitution Art. XVI, § 50(a)(6)(D) to sell the property made the subject matter of this action under the terms of the or Security Instrument and Tex. Prop. Code §51.002.

Respectfully submitted,

**BARRETT DAFFIN FRAPPIER
TURNER & ENGEL, LLP**

By: Elizabeth McDonald

Kimberly Buteaud
Texas Bar No. 24038796
Michelle L. Erwin
Texas Bar No. 24040435
Elizabeth McDonald
Texas Bar No. 24062879
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15000 Surveyor Blvd., Suite 100
Addison, Texas 75001
972-386-5040 (Phone)
972-386-7673 (Fax)
ATTORNEYS FOR APPLICANT

Unofficial Copy Office of Chris [Signature]

3. I am presently employed by Litton Loan Servicing, L.P., which is the mortgage servicer for Barbara C. Myers and Leeroy M. Myers's loan. Litton Loan Servicing, LP retained Litton Loan Servicing, L.P. to be its duly authorized agent for loan service administration for a portfolio of loans that includes the loan made by Barbara C. Myers and Leeroy M. Myers. The facts stated in this Affidavit are also within my personal knowledge and based on my employment with Litton Loan Servicing, L.P. and my responsibilities in said position.

4. I am a custodian of records for Litton Loan Servicing, L.P.. Any documents attached to this Affidavit are records from Litton Loan Servicing, L.P. These records are kept by Litton Loan Servicing, L.P. in the regular course of doing business, and it was the regular course of doing business of Litton Loan Servicing, L.P. for an employee or representative of Litton Loan Servicing, L.P. with knowledge of the acts or events to make the record or to transmit information thereof to be included in such record. Each record is made at or near the time of the act, event or condition recorded or reasonably soon thereafter. The records attached are duplicates of the original. Attached to the application and this Affidavit are true and correct copies of the Home Equity Security Instrument and other documents evidencing the debt owed by Barbara C. Myers and Leeroy M. Myers.

5. As part of my duties for Litton Loan Servicing, L.P. on behalf of Litton Loan Servicing, LP, I am knowledgeable about the loan servicing activities related to Barbara C. Myers and Leeroy M. Myers's home equity loan agreement, as well as enforcing any breach of the loan agreement on the Litton Loan Servicing, LP's behalf. Whenever Barbara C. Myers and Leeroy M. Myers submit(s) a mortgage payment, the payments are posted to Barbara C. Myers and Leeroy M. Myers's servicing records maintained by Litton Loan Servicing, L.P. and the loan payment is then remitted to Litton Loan Servicing, LP's account. Litton Loan Servicing, LP is the party who suffers the monetary loss when Barbara C. Myers and Leeroy M. Myers fail(s) to make mortgage payments or otherwise breach(es) the loan agreement.

6. Barbara C. Myers and Leeroy M. Myers executed a Home Equity Security

Instrument on March 27, 2006 in the amount of \$50,000.00 granting Home123 Corporation or its successor in interest a lien on the property commonly known as 12215 Carola Forest Drive, Houston, TX 77044 and legally described as follows:

LOT NINETEEN (19), IN BLOCK EIGHT (8), OF REPLAT OF KINGS LAKE FOREST, SECTION ONE (1), AN ADDITION IN HARRIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 279, PAGE 64 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS

7. According to Litton Loan Servicing, L.P.'s records related to Barbara C. Myers and Leeroy M. Myers's account, the unpaid principal balance on the loan is \$43,909.04.

8. The amount required to pay off the loan in full before May 28, 2010 is \$54,743.63. The payoff balance is comprised of all monies owed, including but not limited to the unpaid principal balance, interest, escrow advances for taxes and insurance, unpaid late charges, and attorneys' fees. The payoff balance of the loan will continue accruing late charges, interest, attorneys' fees, and escrow advance fees each month that a payment is not made.

9. Barbara C. Myers and Leeroy M. Myers has/have failed to pay timely according to the terms and conditions of the loan agreement. Barbara C. Myers and Leeroy M. Myers failed to remit the monthly payment which became due in May 1, 2009 and every monthly installment which has become due since that date. As of May 3, 2010, the loan is 13 monthly payments in arrears.

10. The required notice of default and notice of acceleration were sent to the appropriate parties by certified mail after the breach of the loan agreement according to the security instrument, Tex. Prop. Code. §51.002, and applicable law.

11. Because Barbara C. Myers and Leeroy M. Myers's loan agreement is in default and Barbara C. Myers and Leeroy M. Myers has/have failed or refused to cure the default after proper notice, Litton Loan Servicing, LP seeks to enforce the loan agreement as provided under Texas law. Litton Loan Servicing, LP, through Litton Loan Servicing, L.P. as the duly authorized

agent for all loan servicing administration activities related to Barbara C. Myers and Leeroy M. Myers's account and under my direction, has performed all the conditions precedent for enforcement of the loan agreement.

FURTHER AFFIANT SAITH NOT.

SIGNED THIS 28 day of May, 2010.

AFFIANT

as authorized agent for Litton Loan Servicing, LP

By

Christopher Spradling

Title

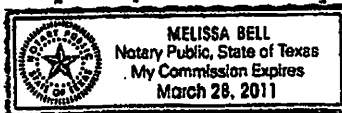
Foreclosure Manager

STATE OF Texas §

COUNTY OF Harris §

SUBSCRIBED and SWORN TO before me on this 28 day of May, 2010, to certify which witness my hand and seal of office.

Notary Public, State of Tx
[Stamp or Seal here]



VERIFICATION

STATE OF Texas §
COUNTY OF Harris §

BEFORE ME, the undersigned authority on this day personally appeared Christopher Spradling ("Affiant") of Litton Loan Servicing, L.P., who after being duly sworn stated upon oath that he/she has read the foregoing Application for Order for Foreclosure Concerning Barbara C. Myers and Leeroy M. Myers and 12215 Carola Forest Drive, Houston, TX 77044 and Affidavit In Support Of Home Equity Application Seeking Foreclosure Order Concerning Barbara C. Myers and Leeroy M. Myers AND 12215 Carola Forest Drive, Houston, TX 77044 and that all facts contained therein are within his/her personal knowledge and are true and correct to the best of his/her information and belief.

AFFIANT

as authorized agent for Litton Loan Servicing, LP

By: [Signature]

Title Christopher Spradling
Foreclosure Manager

SUBSCRIBED and SWORN TO before me on this 28 day of May, 2010, to certify which witness my hand and seal of office.

[Signature]
Notary Public, State of TX
[Stamp or Seal here]

